

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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**Board of Vocational Nursing
and Psychiatric Technicians**

8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. VN-2008-1123

12 JUSTIN KEITH FOXMAN
13 13737 Softwood Court
14 Corona, CA 92880

A C C U S A T I O N

15 **Vocational Nurse License No. VN 219076**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about February 8, 2006, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 219076 to Justin Keith Foxman
25 (Respondent). The Vocational Nurse License expired on November 30, 2009, and has not been
26 renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

6. Section 2892.1 of the Code provides, in pertinent part, that the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

7. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

...

8. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

1 (a) Obtain or possess in violation of law, or prescribe, or except as directed
2 by a licensed physician and surgeon, dentist or podiatrist administer to himself or
3 herself or furnish or administer to another, any controlled substance as defined in
4 Division 10 of the Health and Safety Code, or any dangerous drug as defined in
5 Section 4022.

6 ...

7 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
8 entries in any hospital, patient, or other record pertaining to narcotics or dangerous
9 drugs as specified in subdivision (b).

10 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any
11 controlled substance without a prescription by a physician.

12 10. Section 11032 of the Health and Safety Code provides, in pertinent part, that the term
13 "narcotics" means controlled substances classified in Schedule I or II as defined in section 11054
14 or 11055 of that code and that the term "restricted dangerous drugs" means controlled substances
15 classified in Schedules III and IV as defined in sections 11056 and 11057 of that code.

16 11. Section 11173 (a) of the Health and Safety Code provides, in pertinent part, that (a)
17 no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure
18 the administration of or prescription for controlled substances, (1) by fraud, deceit,
19 misrepresentation, or subterfuge.

20 COSTS

21 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 DRUGS

26 13. AcuDose-Rx is a decentralized medication dispensing cabinet that automates the
27 storing, dispensing and tracking of medications in resident care areas. The system dispenses
28 pharmaceutical medications to an individual authorized to access the system by using ID and
password known only to that individual. Once the password is entered, the cabinet is unlocked
and the medication is removed from the cabinet and then administered to the designated patient.
The medication transactions are recorded and stored in a data system, containing the identity of

1 who accessed the system, the name of the patient who is supposed to receive the medication, the
2 time the system was accessed, the type of medication removed and the quantity of medication that
3 was removed.

4 14. Pyxis is a trade name for an automated single-unit dose medication dispensing system
5 that delivers medications, typically narcotics and controlled substances, to an individual
6 authorized to access the system by using a password known only to that individual. Once the
7 password is entered, the medication drawer or container is unlocked and the medication is
8 removed from the machine and then administered to the designated patient. The medication
9 transaction is recorded and stored into a data system, containing information about the identity of
10 who accessed the system, the name of the patient who is supposed to receive the medication, the
11 time the system was accessed, the type of medication removed and the quantity of medication that
12 was removed.

13 15. Ativan, the trade name for lorazepam, is a Schedule IV controlled substance pursuant
14 to Health and Safety Code section 11057(d)(16) and a dangerous drug pursuant to Business and
15 Professions Code section 4022. Lorazepam is a benzodiazepine with antianxiety, sedative, and
16 anticonvulsant effects.

17 16. Dilaudid is a Schedule II controlled substance as designated by Health and Safety
18 Code section 11055(b)(1)(k) and a dangerous drug pursuant to Code section 4022. Dilaudid is a
19 brand name for the generic drug hydromorphone and is used to treat pain.

20 17. Methadone is a Schedule II controlled substance pursuant to Health and Safety Code
21 section 11055(b)(7)(c) and a dangerous drug pursuant to Business and Professions Code section
22 4022. Methadone is a synthetic narcotic analgesic similar to morphine and is used as temporary
23 maintenance in narcotic addiction/detoxification.

24 18. Vicodin is a trade name for the generic drug hydrocodone with acetaminophen which
25 is designated by Health and Safety Code section 11056(e)(4) as a narcotic drug and a Schedule III
26 controlled substance, and by Business and Professions Code section 4022 as a dangerous drug,
27 and is used as a narcotic analgesic in the relief of pain.

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FACTUAL ALLEGATIONS

WEST ANAHEIM MEDICAL CENTER COMPLAINT

19. From February 2006 to February 27, 2007, Respondent was employed as a licensed vocational nurse at West Anaheim Medical Center in Anaheim, California.

20. An Acu-Dose Report for February 27, 2007, and patient medical records revealed, that drugs withdrawn by Respondent from the Acu-Dose, were either not given to the patients, or higher amounts than prescribed were withdrawn with no documentation shown for administration or wastage. A review of Respondent's Acu-Dose drug activity revealed the following:

21. Patient A: On October 28, 2006, patient A had a physician's order for "Methadone 10 mg P.O."

a. On October 28, 2006, at 1303 hours, Respondent withdrew one tablet of Methadone 10 mg from the Acu-Dose for patient A.

b. Respondent failed to chart the administration or wastage of this medication. One tablet of methadone is unaccounted for.

22. Patient B: Patient B did not have a physician's order for Vicodin.

a. On November 11, 2006, at 1836 hours, Respondent withdrew two tablets of Vicodin 5 mg from the Acu-Dose for patient B. Respondent charted in patient B's medical record that on November 11, 2006 at 1832 hours, Respondent administered 2 tablets of Vicodin to patient B. Therefore, Respondent administered medication that was not prescribed to patient B.

23. Patient C: On November 16, 2006, patient C had a physician's order for Ativan 1 mg.

a. On November 16, 2006, at 1756 hours, Respondent withdrew Ativan 2 mg from the Acu-Dose for patient C.

b. Respondent failed to chart the administration or wastage of this medication. Additionally, Respondent withdrew medication in excess of what was prescribed for patient C. Two mg Ativan is unaccounted for.

24. Patient D: On November 19, 2006, patient D had a physician's order for "Dilaudid 0.5 mg IVP, and Dilaudid 1.0 mg IVP."

1 a. On November 19, 2006, at 1443 hours, Respondent withdrew Dilaudid 2 mg from the
2 Acu-Dose for patient D. Respondent charted that on November 19, 2006 at 0242 hours, he
3 administered Dilaudid 0.5 mg IVP and at 1648 hours, he administered Dilaudid 1 mg IVP.

4 b. Respondent withdrew medication in excess of what was prescribed and failed to chart
5 the administration or wastage, or otherwise account for the extra 0.5 mg of Dilaudid that he
6 removed from the Acu-Dose. The physician's order was for the Dilaudid to be administered IVP
7 and Respondent was not qualified to perform IV therapy. Dilaudid 0.5 mg is unaccounted for.

8 25. Patient E: Patient E did not have a physician's order for Vicodin.

9 a. On December 28, 2006, at 1411 hours, Respondent withdrew two tablets of Vicodin
10 from the Acu-Dose for patient E. Respondent charted that at 1412, patient E refused the Vicodin
11 and requested something different.

12 b. Therefore, Respondent obtained 2 tablets of Vicodin that were not ordered for patient
13 E. Respondent failed to chart the wastage or otherwise account for the 2 tablets of Vicodin. Two
14 tablets of Vicodin were unaccounted for.

15 26. Patient F: On February 16, 2007, patient F had a physician's order for "Dilaudid 1.0
16 mg IVP, repeat Dilaudid 1 mg IVP for comfort."

17 a. On February 16, 2007, at 1729 hours, Respondent withdrew Dilaudid 2 mg from the
18 Acu-Dose for patient F. Respondent charted that on February 16, 2007 at 1720 hours, he
19 administered Dilaudid 1.0 mg.

20 b. Therefore, Respondent withdrew medication in excess of what was prescribed and
21 failed to chart the administration or wastage, or otherwise account for the extra 1.0 mg of
22 Dilaudid that he removed from the Acu-Dose. The physician's order was for the Dilaudid to be
23 administered IVP and Respondent was not qualified to perform IV therapy. Dilaudid 1.0 mg is
24 unaccounted for.

25 **FIRST CAUSE FOR DISCIPLINE**

26 (False, Incorrect or Inconsistent Entries in Hospital/Patient Records)

27 27. Respondent is subject to disciplinary action under Code section 2878.5(e) in that he
28 falsified, or made grossly incorrect, grossly inconsistent or unintelligible entries in hospital and

1 patient records pertaining to controlled substances, when he withdrew medication but failed to
2 chart the administration or wastage of the medication to any patients. The facts and
3 circumstances are more specifically set forth in paragraphs 20 through 26 above, and are
4 incorporated herein as though fully referenced.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Unprofessional Conduct – Obtain or Possess Controlled Substances)

7 28. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the
8 grounds of unprofessional conduct, as defined by Code section 2878.5 (a) in that Respondent
9 obtained and possessed controlled substances in violation of Code section 4060 and Health and
10 Safety Code section 11173(a). The facts and circumstances are more specifically set forth in
11 paragraphs 20 through 26 above, and are incorporated herein as though fully referenced.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct – Failure to Safeguard Client's Health)

14 29. Respondent is subject to disciplinary action under Code section 2878(a) in that he
15 failed to safeguard a patient's health when he gave patient B a dose of Vicodin that was not
16 ordered to be given to patient B. The facts and circumstances are more specifically set forth in
17 paragraph 22 above, which is incorporated herein as though fully referenced.

18 **ST. JOSEPH HOSPITAL COMPLAINT**

19 30. From June 2007 to October 1, 2008, Respondent was employed as a licensed
20 vocational nurse at St. Joseph Hospital in Orange, California.

21 31. A Pyxis Report for June 2008 through September 2008, and patient medical records
22 revealed, that drugs withdrawn by Respondent from the Pyxis, were either not given to the
23 patients, or higher amounts than prescribed were withdrawn with no documentation shown for
24 administration or wastage. The circumstances are as follows:

25 32. Patient 1: On July 18, 2008, patient 1 did not have a physician's order for
26 Hydromorphone and was discharged from the hospital at 1800 hours.

27 a. On July 18, 2009, at 1852 hours, after patient 1 had already been discharged from the
28 hospital, Respondent withdrew Hydromorphone 2 mg from Pyxis for patient 1. Respondent did

1 not chart the administration or wastage of the medication, nor did he record any wastage on the
2 Pyxis machine. Hydromorphone 2 mg is unaccounted for.

3 33. Patient 3: On June 28, 2008, patient 3 did not have a physician's order for
4 Hydromorphone and was discharged from the hospital at 1430 hours.

5 a. On June 28, 2008, at 1439 hours, after patient 3 had already been discharged from the
6 hospital, Respondent withdrew Hydromorphone Injection 2 mg from Pyxis for patient 3.
7 Respondent did not chart the administration or wastage of the medication, nor did he record any
8 wastage on the Pyxis machine. Hydromorphone 2 mg is unaccounted for.

9 34. Patient 5: On June 20, 2008, patient 5 did not have a physician's order for
10 Hydromorphone and was discharged from the hospital at 1230 hours.

11 a. On June 20, 2008, at 1247 hours, after patient 5 had already been discharged from the
12 hospital, Respondent withdrew Hydromorphone Injection 2 mg from Pyxis for patient 5.
13 Respondent did not chart the administration or wastage of the medication, nor did he record any
14 wastage on the Pyxis machine. Hydromorphone 2 mg is unaccounted for.

15 35. Patient 6: On July 4, 2008, patient 6 had a physician's order for Hydromorphone 1-3
16 mg IV, and was discharged from the hospital at 1730 hours.

17 a. On July 4, 2008, at 1844 hours, after patient 6 had already been discharged from the
18 hospital, Respondent withdrew Hydromorphone Injection 2 mg from Pyxis for patient 6.
19 Respondent charted that on July 4, 2008 at 1315 hours, he administered Dilaudid¹ 1 mg IV to
20 patient 6. Respondent also charted on July 4, 2008 at 1630 hours, he administered Dilaudid 0.5
21 mg IVP to patient 6.

22 b. The Medication Administration Record for patient 6 indicates that Dilaudid was
23 administered by IV to patient 6 at 1315 and 1630 hours, which is several hours prior to
24 Respondent pulling the Hydromorphone medication from Pyxis at 1844 hours. When Respondent
25 pulled the Hydromorphone medication at 1844, patient 6 had already left the hospital.

26
27 ¹ Dilaudid is a brand name for the generic drug hydromorphone. Even though Respondent
28 withdrew hydromorphone for patient 6 from Pyxis, he charted the hydromorphone drug by its
brand name of Dilaudid in patient 6's chart.

1 Additionally, Respondent failed to account for the remaining 0.5 mg of Dilaudid that he removed
2 from the Pyxis machine and Respondent was not qualified to perform IV therapy.

3 36. Patient 11: On August 31, 2008, patient 11 did not have a physician's order for
4 Hydromorphone and was discharged from the hospital at 1700 hours.

5 a. On August 31, 2008, at 1732 hours, after patient 11 had already been discharged from
6 the hospital, Respondent withdrew Hydromorphone Injection 2 mg from Pyxis for patient 11.
7 Respondent did not chart the administration or wastage of the medication, nor did he record any
8 wastage on the Pyxis machine. Hydromorphone 2 mg is unaccounted for.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 (False, Incorrect or Inconsistent Entries in Hospital/Patient Records)

11 37. Respondent is subject to disciplinary action under Code section 2878.5(e) in that he
12 falsified, or made grossly incorrect, grossly inconsistent or unintelligible entries in hospital and
13 patient records pertaining to controlled substances, when he withdrew medication but failed to
14 chart the administration or wastage of the medication to any patients and/or documented the
15 administration of medications that were not given to a patient. The facts and circumstances are
16 more specifically set forth in paragraphs 31 through 36 above, and are incorporated herein as
17 though fully referenced.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct – Obtain or Possess Controlled Substances)

20 38. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the
21 grounds of unprofessional conduct, as defined by Code section 2878.5 (a) in that Respondent
22 obtained and possessed controlled substances in violation of Code section 4060 and Health and
23 Safety Code section 11173(a). The facts and circumstances are more specifically set forth in
24 paragraphs 31 through 36 above, and are incorporated herein as though fully referenced.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
28 issue a decision:

1 1. Revoking or suspending Vocational Nurse License Number VN 219076, issued to
2 Justin Keith Foxman;

3 2. Ordering Justin Keith Foxman to pay the Board of Vocational Nursing and
4 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
5 pursuant to Business and Professions Code section 125.3; and;

6 3. Taking such other and further action as deemed necessary and proper.

7
8 DATED: May 13, 2011.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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